

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KRAFT FOODS GLOBAL, INC., THE)	
KELLOGG COMPANY, GENERAL)	
MILLS, INC., and NESTLÉ USA, INC.,)	
)	
Plaintiffs,)	No. 1:11-cv-08808
)	
v.)	Judge Steven C. Seeger
)	
UNITED EGG PRODUCERS, INC.,)	
UNITED STATES EGG MARKETERS,)	
INC., CAL-MAINE FOODS, INC., and)	
ROSE ACRE FARMS, INC.)	
)	
Defendants.)	
)	

**PLAINTIFFS' MOTION IN LIMINE TO ADMIT BUSINESS RECORDS PURSUANT
TO FEDERAL RULES OF EVIDENCE 803(6) AND 902(11)**

Plaintiffs respectfully move the Court to admit certain documents as business records pursuant to Federal Rule of Evidence 902(11). In support, Plaintiffs state the following:

Federal Rule of Evidence 902(11) provides that certified copies of domestic business records are self-authenticating if the party offering the records provides the adverse party written notice and allows the adverse party to inspect the exhibit and certification, allowing the party to challenge the authenticity of the records.

Further, Federal Rule of Evidence 803(6) creates an exception to the hearsay rule under the following conditions:

- (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;
- (B) the record was kept in the course of a regularly conducted activity of a business organization, occupation, or calling, whether or not for profit;
- (C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of the information or the method or circumstances of preparation indicate a lack of trustworthiness.

The Seventh Circuit has consistently permitted the admission of business records through business records certifications, pursuant to Rules 803(6) and 902(11). *See, e.g., Thanongsinh v. Board of Educ.*, 462 F.3d 762, 775-775 (7th Cir. 2006) (business records are admissible and not subject to hearsay rule where certified under Rule 902(11)); *Stone v. Morris*, 546 F.2d 730, 737-738 (7th Cir. 1976) (admitting documents under business records exception to hearsay rule).

Plaintiffs therefore move the Court to find, pursuant to Federal Rule of Evidence 104, that the records at issue are authentic business records within the meaning of Federal Rule of Evidence 803(6). Rule 104 authorizes the Court to determine “[p]reliminary questions concerning the qualification of a person to be a witness, the existence of privilege, or the admissibility of evidence.” Rule 104 applies to all preliminary determinations, including the issue of whether documents fall within the business records exception to the hearsay rule. *See United States v. Kasvin*, 757 F.2d 887, 893 (7th Cir. 1985) (affirming trial court’s preliminary determination pursuant to Rule 104 that business records were admissible pursuant to Rule 803(6)).

Exhibits A-C attach the business record certificates and the accompanying documents. Plaintiffs intend to introduce the documents, authenticated by the business records certificates, on direct examination, cross-examination, or rebuttal.

Because the business records and their accompanying certification fall under Federal Rules of Evidence 902(11) and 803(6), Plaintiffs respectfully request that this Court find, under Rule 104, that the identified business records fall within the business records exception to the hearsay rule.

November 24, 2023

Respectfully submitted,

***Counsel for Plaintiffs Kraft Foods Global, Inc.,
General Mills, Inc., Nestlé USA, Inc. and The
Kellogg Company***

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